

No. 2019

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.
JOSEPH JOURDEN,
Defendant in Error.

TRANSCRIPT OF RECORD.

**Upon Writ of Error to the United States District
Court for the District of Alaska,
Second Division.**

FILED
AUG 8 1 1911

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of] Attorneys of Record.

B. S. RODEY, U. S. Attorney, Nome, Alaska,
N. H. CASTLE, Assistant U. S. Attorney, Nome,
Alaska,

Attorneys for Plaintiff.

ELWOOD BRUNER, Nome, Alaska,
J. ALLISON BRUNER, Nome, Alaska,
GEO. B. GRIGSBY, Nome Alaska,
Attorneys for Defendant.

*In the District Court, District of Alaska, Second
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Summons [In Case No. 2259].

The President of the United States of America, to
Joseph Jourden, Greeting:

You are hereby summoned and required to appear
and answer the complaint of the plaintiff on file in
the office of the Clerk of said Court, at the city of
Nome in said District, within thirty days from the
service of this Summons upon you, or judgment for
want thereof will be taken against you; and you are
hereby notified that if you fail to answer the said
complaint the plaintiff will take judgment against
you for the sum of two thousand dollars and for costs.

Witness, the Honorable CORNELIUS D.
MURANE, Judge of the said District Court, and the
seal of the said Court hereto affixed, this twenty-

fourth day of February, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

[Court Seal]

JOHN SUNDBACK,

Clerk of the District Court, District of Alaska, 2nd Division.

By T. M. Reed,
Deputy Clerk.

United States Marshal's Office,
District of Alaska, 2d Division,—ss.

I hereby certify that I received the within Summons on the 24th day of February, 1911, and thereafter, on the 24th day of February, 1911, I served the same at Nome, Alaska, by delivering to and leaving with Joseph Jourden a copy thereof, together with a certified copy of the Complaint filed herein.

Returned this 25th day of February, 1911.

T. C. POWELL,

U. S. Marshal.

By H. H. Darrah,
Deputy.

MARSHAL'S COSTS.

1 Service.....\$6.00

[Endorsed]: Cause No. 2259. District Court, District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Summons. *R*Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Mar. 10, 1911. John Sundback, Clerk. By———, Deputy.

*District Court for the District of Alaska, Second
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Complaint [In Case No. 2259].

Now comes plaintiff above named and complaining of said defendant for cause of action alleges as follows:

1.

That between the first day of November, 1909, and the first day of November, 1910, said defendant conducted a barroom and retail liquor business in the city of Nome, District of Alaska, under and by virtue of a barroom and retail liquor license issued by the District Court for the District of Alaska to said defendant on the first day of November, 1909.

2.

That during the said period, to wit, from November the first, 1909, to November the first, 1910, there were within and under the jurisdiction of the above entitled court other dealers conducting barroom and retail liquor businesses under licenses granted by said court, similar to that granted as aforesaid to this defendant, and that during said period this defendant sold, furnished and delivered to many of said other dealers last above described large quantities, being all of certain kinds of distilled, malt and fermented liquors, in which they dealt, and during said period continued to maintain and keep on hand and in warehouses for such purpose a large stock

of said distilled, malt and fermented liquors, largely in excess of the ordinary requirements of his own said barroom and retail liquor business.

3.

That under the said barroom and retail liquor license so granted and obtained as aforesaid in paragraph 1 of this complaint, and in addition thereto, said defendant deliberately, intentionally, knowingly, and in fact did and conducted the business of a wholesale dealer in distilled, malt and fermented liquors in this, that during said period he sold, delivered and furnished to said other retail liquor dealers, and to other customers, distilled, malt and fermented liquors in large quantities and greatly in excess of the maximum of five gallons as limited by said retail liquor license.

4.

That the said defendant during the said period conducted his said wholesale business in the following manner, to wit, by continuously, knowingly and with intent as aforesaid, delivering to one and the same person often on one and the same day, and frequently several times on the same day, and at intervals so close together as to constitute in truth and in fact a single sale to such customers, quantities of distilled, malt and fermented liquors that aggregated in the amount so sold and delivered to each of said customers a quantity largely in excess of five gallons, falsely and knowingly claiming and pretending each such so called sale and delivery to be a sale of five gallons or under, and thus seeking and pretending by such attempted segregation to keep within the limitation of five gallons at a single sale, and while

so furnishing said commodities in wholesale quantities, by said subterfuge was so attempting and intending to avoid the payment of a wholesale liquor license.

5.

That said defendant during all of the said period failed, neglected and refused to apply for or to secure a wholesale liquor license as required by Sec. 468 of the Code of Criminal Procedure of the District of Alaska, and the amendments thereto, contained at page 602 of Vol. 35 of the U. S. Statutes at Large, and further, said defendant notwithstanding that he had been so conducting during said period a wholesale liquor business, failed, neglected and refused, and now still refuses, to pay the sum so due to plaintiff as a wholesale liquor license for conducting the said business from November the first, 1909, to November the first, 1910, though demand has been frequently made therefor.

6.

That there is now due and owing to the United States of America the sum of Two Thousand Dollars for the doing and conducting of said wholesale liquor business by said defendant during the said period, and no part whereof has been paid.

WHEREFORE: Plaintiff demands judgment against said defendant for the said sum of Two Thousand Dollars and for the costs in this behalf expended.

B. S. RODEY,
U. S. Attorney.

United States of America,
District of Alaska,—ss.

B. S. Rodey, being first duly sworn, deposes and

says: "I have read the foregoing complaint and know the contents thereof and verily believe the same to be true. I make this verification because the United States of America is the party plaintiff and I am its officer."

B. S. RODEY,

Subscribed and sworn to before me this 24th day of February, 1911.

[Notarial Seal] NEVILLE H. CASTLE,
Notary Public in and for the District of Alaska.

[Endorsed]: No. 2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Complaint. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Feb. 24, 1911. John Sundback, Clerk. By———, Deputy. B. S. Rodey, U. S. Attorney, Attorney for Plaintiff.

*In the District Court for the District of Alaska,
Second Division.*

No. 2259.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH JOURDEN,
Defendant.

Demurrer [in Case No. 2259].

Comes now the defendant in the above-entitled action, and demurs to the complaint of the plaintiff filed herein on the following grounds.

1.

That the Court has no jurisdiction of the subject of the action.

2.

That the complaint does not state facts sufficient to constitute a cause of action.

ELWOOD BRUNER,
J. ALLISON BRUNER,
GEORGE B. GRIGSBY,
Attorneys for Defendant.

I hereby acknowledge the service of the Demurrer by receipt of copy this 22 day of March, 1911.

N. H. CASTLE,
Asst. Attorney for Plaintiff.

[Endorsed]: No. 2259. In the United States District Court, District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Demurrer. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Mar. 22, 1911. R. John Sundback, Clerk. By ———, Deputy. Elwood Bruner, J. Allison Bruner, Geo. B. Grigsby, Defendant's Atty. Nome, Alaska.

[Minutes—April 22, 1911—Re Filing of Opinion.]
In the District Court for the District of Alaska,
Second Division.

Term minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, April 22, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

2259.

UNITED STATES,

vs.

JOSEPH JOURDEN.

2260.

UNITED STATES,

vs.

JOSEPH JOURDEN.

The Court handed down an opinion herein sustaining the demurrer in each of these cases.

Opinion filed.

*In the District Court for the District of Alaska,
Second Division.*

No. 2260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Opinion.

This cause came before the Court on demurrer to the complaint.

B. S. RODEY, U. S. Attorney, and N. H. CASTLE, Assistant U. S. Attorney, Appearing for the Government.

ELWOOD BRUNER, J. ALLISON BRUNER and GEO. B. GRIGSBY, Appearing for the Defendant.

The Government through its officers brought two civil actions for two thousand dollars in each case,

alleging said amounts to be due from the defendant as a license fee for having conducted a wholesale liquor business in the municipality of Nome, Second Division of the District of Alaska. The same questions are involved in both cases and they were argued and submitted together.

The complaint filed by the Government is as follows:

“That said defendant is now conducting a barroom and retail liquor business in the city of Nome, District of Alaska, under and by virtue of a barroom and retail liquor license issued by the District Court for the District of Alaska on the first day of November, 1910.

“That there are now and have been during all of the times mentioned in said complaint, within and under the jurisdiction of the above-entitled court, other dealers conducting barroom and retail liquor businesses under licenses granted by said court, similar to that granted to this defendant, and that this defendant has been since the first day of November, 1910, and is now selling, furnishing and delivering to many of said other dealers last above described large quantities, being all of certain kinds of distilled, malt and fermented liquors in which they deal, and during said period, has been and is now maintaining and keeping on hand and in warehouses for such purpose a large stock of said distilled, malt and fermented liquors, largely in excess of the ordinary requirements of his own said barroom and retail liquor business.

“That under the said barroom and retail liquor license so granted and obtained as aforesaid in para-

graph 1 of this complaint, and in addition thereto, said defendant has been and is deliberately, intentionally and knowingly, now in fact doing and conducting the business of a wholesale dealer in distilled, malt and fermented liquors, in this, that he is selling, delivering and furnishing to said other retail liquor dealers and to other customers distilled, malt and fermented liquors in large quantities and greatly in excess of the maximum of five gallons as limited by his said retail liquor license.

“That said defendant has been and is now conducting his said wholesale business in the following manner, to wit, by continuously, knowingly and with intent as aforesaid, delivering to one and the same person often on one and the same day, and frequently several times on the same day, and at intervals so close together as to constitute in truth and in fact a single sale to such customers, quantities of distilled, malt and fermented liquors that aggregate in the amount so sold and delivered to each of said customers a quantity largely in excess of five gallons; falsely and knowingly claiming and pretending that each such so called sale and delivery is a sale of five gallons or under, and thus seeking and pretending by such attempted segregation to keep within the limitation of five gallons at a single sale, and while so furnishing said commodities in wholesale quantities, by said subterfuge is so attempting and intending to avoid the payment of a wholesale liquor license.

“That said defendant during all of the said period has failed, neglected and refused and now still refuses to apply for or to secure a wholesale liquor license as required by Sec. 468 of the Code of Crim-

inal Procedure of the District of Alaska and the amendments thereto, contained at page 602 of Vol. 35 of the U. S. Statutes at Large, and further, said defendant notwithstanding he has been and is so conducting a wholesale liquor business, has failed, neglected and refused and now still refuses to pay the sum so due to plaintiff as a wholesale liquor license for conducting the said business, though demand has been frequently made therefor.”

To this complaint the defendant has in each case interposed a demurrer. The demurrer sets up—

1. That the Court has no jurisdiction of the subject of the action;

2. That the complaint does not state facts sufficient to constitute a cause of action.

Both grounds of the demurrer raise an issue as to whether the Government can by civil suit collect the license fee of two thousand dollars where it appears that a person has violated Sec. 468 of Carter's Code of Alaska, Act March 3, 1899, as amended by Act Feb. 6, 1909.

Counsel for the Government very earnestly contend that this is a proper and permissible remedy and cite numerous authorities which they maintain support this contention. In order to better understand the contentions of the respective parties and to be able to apply the authorities we should constantly bear in mind the wording of our statute, Sec. 472 of the Criminal Code of Alaska, which is as follows:

“PENALTY FOR SELLING LIQUORS WITHOUT LICENSE. That anyone engaging in the sale of intoxicating liquors, as specified in this Act, in the District of Alaska, who is required by it

to have a license as herein specified, without first having obtained a license to do so as herein provided, or any person who shall engage in such sale in any portion of the District where the sale thereof is prohibited, upon conviction thereof shall be fined not less than one hundred dollars nor more than two thousand dollars, or be imprisoned for not less than one month nor more than one year; and upon every subsequent conviction of a like offense shall, in addition to the penalty above named, be imprisoned not less than two months nor more than one year."

The phrases "upon conviction thereof shall be fined"—"or be imprisoned," are of controlling importance in construing this Act.

Sec. 474 of said license Act, Carter's Code of Criminal Procedure, under the Title "Procedure," reads as follows:

"That prosecutions for violations of the provisions of this Act shall be on information filed in the district court or any subdivision thereof, or before a United States Commissioner, by the United States marshal or any deputy marshal, or by the district attorney or by any of his assistants. Or such prosecution may be by and through indictment by grand jury, and it shall be the duty of either of said officers, on the representation of two or more reputable citizens, to file such information, or to present the facts alleged to constitute violations of the law to the grand jury."

The title of the Act of March 3, 1899, is in the following language:

"An Act to define and punish crimes in the District of Alaska, and to provide a Code of Criminal

Procedure for said District.”

In a very recent case which went to the Circuit Court of Appeals from this Division entitled John J. Sesnon Company vs. the United States, reported in 182 Fed. Rep. at page 576, the Court says:

“When doubt exists as to the meaning of the statute the title may be looked to for aid in its construction.”

Counsel for the Government in their brief and argument have evidently overlooked the difference in the wording of Sec. 3242 U. S. Revised Statutes, and the Alaska License Act of 1899 as amended by the Act of 1909. The Revised Statutes provided that any person who carries on the business of such dealer without having paid the tax shall be *liable for the tax* and also a fine of not less than ten nor more than five hundred dollars; while the Alaska Code only provides for a fine or imprisonment, clearly indicating in the latter case that only a criminal action is contemplated by the Code. Where that is the case the rule is well settled that no civil action will lie.

The Supreme Court of the United States in passing upon a statute which is to all intents identical with ours laid this down as a settled rule in the case of the United States vs. Claflin, 97 U. S. 546.

In the case of Ex parte Howe, reported in 26 Oregon 184, in construing a statute having the words “conviction” and “Punishment,” appears the following pertinent language:

“The terms ‘conviction’ and ‘punishment’ each have a well settled legal meaning and are used in the law to designate certain stages and incidents of a criminal prosecution, and when the legislature de-

clared that for a violation of his official duty a county treasurer should, on conviction thereof, be punished, it manifestly intended that the proceedings against him should be on the criminal not the civil, side of the court."

"To the same effect is the language of the Ency. Pl. & Pr., vol. 16 at page 234, where the author says:

"With reference to penal actions the word 'penalty' means a forfeiture inflicted by penal statute; the word 'fine' a sum of money imposed by a criminal law. The use of these and other technical words and phrases will frequently determine the form of the action as respectively civil or criminal."

In the case of the State of Iowa vs. Chicago B. & Q. R. Co., 37 Fed. Rep. 498, is contained a quotation from Blackstone drawing a distinction between crimes and misdemeanors and civil injuries, in which it is said that "crimes and misdemeanors are a breach in violation of public rights and duties due to the whole community, considered as a community, in its social aggregate capacity," which brings to the mind of the court that the License Act of Alaska is not alone for the benefit of the United States Government but that a community in Alaska has an interest in the question whether a license shall be granted or not, and the Act protects that right by requiring the party applying for a license to secure the consent of a majority of the inhabitants before the license can issue. If the Government could permit a person to violate the law and permit such person to conduct the business of wholesaling or retailing without first securing the license as required, and after the time had expired could sue and recover the amount of the li-

cense this provision of the law could be defeated and the citizens compelled to tolerate the existence of a barroom or wholesale house within its midst and against the wish of a majority of the inhabitants.

The word "information" as used in the Act is defined by Sec. 270, page 91, of Carter's Code, and clearly shows that it is used in a criminal sense.

Where the statute provides the right and the remedy, only the statutory remedy can be followed.

People vs. Croycroft, 2 Cal. 243.

Reed vs. O. R. R. Co., 33 Cal. 212.

In the case of Reed vs. O. R. R. Co., *supra*, Judge Shafter uses the following quotation from Chief Justice Shaw:

"Where a statute gives a new right and prescribes a particular remedy for its recovery, such remedy must be strictly pursued, though it is otherwise where a statute gives a right without prescribing a remedy. In the latter case the common law affords the remedy and any suitable form of action may be adopted."

Many of the authorities cited by counsel for the Government are based either upon statutes creating a penalty or forfeiture without prescribing the remedy, and several of them are upon statutes which provide for a penalty, forfeiture or fine and prescribe a civil remedy, or both a civil and criminal remedy.

For instance, one of the cases relied upon and from which counsel quote is the State of Idaho vs. Wall, 109 Pac. Rep. 724. If counsel had quoted the statute, which is set forth in the opinion, in addition to the extract from the opinion, it would have been of

much more assistance to the court.

A portion of the Idaho statute reads as follows:

“The collector may direct suit in the name of the State of Idaho as plaintiff to be brought for the recovery of license tax and in such case either the collector or prosecuting attorney may make the necessary affidavit for a writ of attachment, which may issue without bond being given on behalf of the plaintiff. In case of a recovery by the plaintiff twenty dollars damages must be included in the judgment and costs to be collected from the defendant etc.”

The case of *United States vs. Ebner*, reported in 25 Fed. Cases, No. 15,020, seems to lay down the proper rule to be followed as to the remedy to be pursued under different statutes. The court says:

“And for our future guidance in relation to the violations of the internal revenue act, I venture to lay down the following rules:

1. Where the punishment prescribed is a pecuniary penalty or fine only, and where the act fixes the exact amount of it, the action of debt will lie to recover it.

2. Where the punishment provided is a fine only, and the exact amount of it is not fixed by the act, but is left to the discretion of the court trying the case,—as where the language is that the party shall be fined in any sum not exceeding a certain amount,—there the action of debt will not lie, nor can any other civil action be the ‘appropriate’ remedy, but the prosecution must be by indictment.

3. In all cases in which the act provides that imprisonment may or must be a part of the punishment,

there no civil action will lie, and the only remedy is by indictment.”

Our statute falls within both of the last divisions quoted and counsel for the Government have cited no authority which holds that a civil action can be maintained under a statute of that character. It will be noted that our statute does not declare a forfeiture of the license fee of two thousand dollars and that it may be collected by an appropriate remedy, but simply imposes a penalty for the violation of the law by way of a fine or imprisonment.

In further support of the proposition that a proceeding by information or indictment is the only remedy under our Code the court wishes to call the attention of counsel to the case of *State vs. Marshall*, reported in 15 Atl. Rep. 210 (Supreme Court of N. H.); also 23 CYC. 212 (d).

The court has examined numerous other cases which support this position but deems it unnecessary to cite further authority upon this branch of the case.

The other phase of the law which was argued to some extent by counsel for the defendant and to which the attorneys for the Government devoted but little time, the court deems it unnecessary to pass upon as the matter already considered disposes of the case; but in view of the fact that the matter may possibly come before the court in another form when counsel will undoubtedly present a full argument upon authority I will simply direct the attention of counsel on both sides to the following authorities

which I have noted in my examination into the question passed upon.

U. S. vs. Clair, 2 Fed. Rep. 57.

U. S. vs. Giller, 54 Fed. Rep. 659.

People vs. Charbineau, 22 N. E. 271.

The demurrers in each case are sustained.

CORNELIUS D. MURANE,

District Judge.

[Endorsed]: No. 2259. (2260.) In the District Court for the District of Alaska, Second Division. The United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Opinion. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 22, 1911. John Sundback, Clerk. By —————, Deputy.

**[Stipulation Re Plaintiff's Election to Amend or
[Stand upon Complaint, etc., in Case No. 2259.]**

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA

vs.

JOSEPH JOURDEN.

It is hereby stipulated and agreed between the counsel for the plaintiff and defendant above named that plaintiff have ninety (90) days from date within which to elect as to whether it will amend or stand upon the complaint as herein filed, or take such other

action in the premises as to it may seem expedient.

Dated at Nome, Alaska, this 22d day of April, 1911.

N. H. CASTLE,

Asst. U. S. Attorney.

ELWOOD BRUNER,

J. ALLISON BRUNER,

GEO. B. GRIGSBY,

Attorneys for Defendant.

[Endorsed]: No. 2259. In the District Court for the District of Alaska, Second Division. United States of America vs. Joseph Jourden. Stipulation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 22, 1911. John Sundback, Clerk. By —————, Deputy. R.

[Minutes—July 8, 1911—Re Dismissal of Action No. 2259 and Plaintiff's Election to Stand on Complaint in Case No. 2260.]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, July 8, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

2259

UNITED STATES

vs.

JOURDEN.

Assistant U. S. Attorney Castle stated to the Court that the U. S. Attorney's office elected to stand on the complaint filed herein, and would not amend.

Thereupon, upon motion of Geo. B. Grigsby, attorney for the defendant Jourden, it was ordered that this action be dismissed, to which ruling of the Court exception was taken by the U. S. Attorney and exception allowed.

2260.

UNITED STATES

vs.

JOURDEN.

Assistant U. S. Attorney Castle stated in open Court that the U. S. Attorney's office elected to stand on the complaint filed herein and refused to amend.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Bill of Exception [In Case No. 2259].

This was an action at law to recover the sum of Two Thousand Dollars alleged to be due from defendant to plaintiff for conducting the business of a wholesale dealer in distilled, malt and fermented liquors between the 1st day of November, 1909, and the 1st day of November, 1910. The original complaint was filed on the 24th day of February, 1911,

and service of summons was regularly had, and thereafter returned into court. On March the 22d, 1911, defendant demurred to plaintiff's complaint on the grounds, first, that the Court had no jurisdiction of the subject of the action; second, that the complaint did not state facts sufficient to constitute a cause of action. Said cause came on regularly to be heard before the court upon said demurrer on the 15th day of April, 1911, and after the hearing of oral argument, the court on the 22d day of April, 1911, filed its opinion sustaining generally the said demurrer, whereof a minute order was made, and said demurrer was accordingly sustained, to which said ruling plaintiff excepted.

Thereafter, and on said 22d day of April, 1911, stipulation between the parties was filed, whereby said plaintiff was granted ninety days within which to elect what other or further action it would take in the said cause, in pursuance whereof on the 8th day of July, 1911, defendant in open court elected to stand upon the complaint herein. On said 8th day of July, on motion of defendant, judgment of dismissal was duly entered herein, to which ruling of the Court and the entry of said judgment said plaintiff duly excepted, and its said exceptions were duly allowed and entered, and now in furtherance of justice, and that right may be done, the plaintiff presents the foregoing as its Bill of Exceptions in this case, and prays that the same may be settled and allowed, and signed and certified by the Judge as provided by law.

B. S. RODEY,

United States Attorney and Attorney for Plaintiff.

The foregoing Bill of Exceptions is correct in all respects, and is hereby approved, allowed and settled, and made a part of the record herein.

Done in open court at the general January term thereof, and on this 15th day of July, 1911.

CORNELIUS D. MURANE,

District Judge.

Service by receipt of a true copy of the foregoing Bill of Exceptions admitted at Nome, Alaska, on this 13th day of July, 1911.

ELWOOD BRUNER,

Of Attorneys for Defendant.

[Endorsed]: 2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Bill of Exceptions. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 13, 1911. John Sundback, Clerk. By ————, Deputy.

Refiled in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By ————, Deputy.

**[Minutes—July 15, 1911—Re Settlement of Bill of
Exceptions, Allowance of Writ of Error, etc., in
Case No. 2259.]**

*In the District Court for the District of Alaska,
Second Division.*

Term minutes, General, 1911, Term, beginning Feb-
ruary 1, 1911.

Saturday, July 15, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following pro-
ceedings were had:

2259.

UNITED STATES

vs.

JOURDEN.

Mr. N. H. Castle, Assistant U. S. Attorney, pre-
sented to the Court the proposed bill of exceptions,
heretofore filed, and stated to the Court that the
same had been agreed upon as a true and correct bill
of exceptions, and moved that the same be now set-
tled and allowed; and the Court, having considered
said bill of exceptions as proposed, settled and al-
lowed the same as a true and correct bill of excep-
tions herein.

Thereupon Mr. Castle, Assistant U. S. Attorney,
presented to the Court a petition for writ of error
and order allowing writ of error; the Court, having
considered said petition, allowed said writ of error,
and signed an order allowing same. Thereupon

Assistant U. S. Attorney Castle presented to the Court a writ of error and citation herein, which were allowed and signed by the Court. And thereupon Assistant U. S. Attorney Castle presented to the Court a stipulation signed by the attorneys for plaintiff and defendant herein, agreeing that this cause be heard before the Circuit Court of Appeals for the Ninth Circuit, at Seattle, State of Washington, and moved the Court for an order setting the case to be heard at Seattle, which motion was allowed by the Court and an order signed to that effect.

On motion of Assistant U. S. Attorney Castle, the Court granted an order enlarging the time to docket the case in the Circuit Court of Appeals, to the 15th day of September, 1911. Order filed.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Assignment of Errors.

Comes now plaintiff in the above-entitled action and assigns the following errors upon which it will rely:

1. The Court erred in sustaining the demurrer to plaintiff's complaint;
2. The Court erred in dismissing said action and entering a judgment of dismissal thereof.

B. S. RODEY,
United States Attorney and Attorney for Plaintiff.

Service of the foregoing Assignment of Errors is hereby admitted this 13th day of July, 1911.

ELWOOD BRUNER,
Of Attorneys for Defendant.

[Endorsed]: #2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Assignment of Errors. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 13, 1911. John Sundback, Clerk. By —————, Deputy.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Petition for Writ of Error.

The United States of America, plaintiff in the above-entitled cause, feeling itself aggrieved by the sustaining of the demurrer to the complaint, and the entry of judgment of dismissal herein on the 8th day of July, 1911, comes now by B. S. Rodey, United States Attorney for the Second Division of the District of Alaska and attorney for plaintiff, and petitions said court for an order allowing said plaintiff to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the 9th Circuit under and according to the laws of the United States in that behalf made and provided and without bond.

And your petitioner will ever pray.

B. S. RODEY,
United States Attorney and Attorney for Plaintiff.

Service of the foregoing petition is hereby admitted this 15th day of July, 1911.

GEORGE B. GRIGSBY,
Of Attorneys for Defendant.

[Endorsed]: # 2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Petition for Writ of Error. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By —————, Deputy. R.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOSEPH JOURDEN,
Defendant.

Order Allowing Writ of Error.

Upon motion of B. S. Rodey, United States attorney and attorney for plaintiff, and upon filing the petition for writ of error and assignment of errors,

IT IS ORDERED that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the 9th Circuit the judgment of dismissal heretofore entered herein.

No cost or supersedeas bond shall be required of plaintiff.

Done in open court this 15th day of July, 1911.

CORNELIUS D. MURANE,

District Judge.

2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Order Allowing Writ of Error. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By —————, Deputy. R.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

**Stipulation [That Hearing may be Had at Seattle,
Washington].**

It is hereby stipulated between counsel for the respective parties hereto that hearing upon the Writ of Error herein may be had at the city of Seattle, State of Washington, at the session of the United

States Circuit Court of Appeals at said place.

Dated at Nome, Alaska, this 14th day of July, 1911.

B. S. RODEY,

United States Attorney and Attorney for Plaintiff.

ELWOOD BRUNER,

J. ALLISON BRUNER,

GEO. B. GRIGSBY,

Attorneys for Defendant.

[Endorsed]: # 2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Stipulation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By ———, Deputy. R.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Order Extending Time to File Transcript of Record.

Now, on this 15th day of July, 1911, and on motion of B. S. Rodey, attorney for the plaintiff, for the extension of time in which to file a transcript herein in the United States Circuit Court of Appeals for the 9th Circuit,

IT IS ORDERED that the time in which to file said transcript and docket said cause in said United

States Circuit Court of Appeals for the 9th Circuit be and the same is hereby extended to September the 15th, 1911.

Done in open court this 15th day of July, 1911.

CORNELIUS D. MURANE,

District Judge.

[Endorsed]: #2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Order Extending Time to File Transcript of Record. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By ———, Deputy. R.

UNITED STATES OF AMERICA.

District Court, District of Alaska, Second Division.

Cause No. 2259.

UNITED STATES,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Praeceptum [for Record].

To the Clerk of the Above-entitled Court:

You will please prepare record on appeal in above cause and include therein: (1) Summons and Complaint; (2) Demurrer; (3) Court's Opinion on Demurrer; (3) Min. Order Sustaining; (4) Stipulation; (5) Minute entries of July 8th; (6) B. of Ex.; (7) Minute order of July 15th as to B. of Ex.; (8) Ass. of Errors; (9) Order Allowing; (10) Writ; (11)

Citation; (12) Stip. fixing Seattle; (13) Order Ex. Time.

N. H. CASTLE,
Asst. U. S. Atty.

July 15, '11.

[Endorsed]: Cause No. 2259. District Court, District of Alaska, ——— Division. U. S. Plaintiff vs. Jos. Jourden, Defendant. Praecipe. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 15, 1911. John Sundback, Clerk. By —————, Deputy. R.

[Certificate of Clerk U. S. District Court to Record.]

*In the District Court for the District of Alaska,
Second Division.*

No. 2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

I, John Sundback, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 39, both inclusive, are a true and exact transcript of the Summons, Complaint, Demurrer, Court Minutes of April 22, 1911 (sustaining demurrer) in cause No. 2259, Court's Opinion on Demurrer, Stipulation, Court Minutes of July 8, 1911, in re Cause No. 2259, Bill of Exceptions, Court Minutes of July 15, 1911 in re Cause No. 2259, Assignment of Errors, Petition for Writ of Error, Order Allowing Writ of Error, Stipulation for hearing at Seattle, Order Extending Time

to File Transcript of Record and Praeceptum for Record, in the case of United States of America, plaintiff, vs. Joseph Jourden, defendant, No. 2259-Civil, this Court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Writ of Error and original Citation in the above-entitled cause are attached to this transcript.

Cost of transcript 12.05.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 18th day of July, A. D. 1911.

[Seal]

J. SUNDBACK,
Clerk.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Writ of Error [Original].

United States of America,—ss.

The President of the United States of America to the Honorable Cornelius D. Murane, Judge of the District Court for the Second Division of Alaska, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States of America, plaintiff in error, and Joseph Jourden, defendant in error, a manifest error

hath appeared to the great damage of the said United States of America, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that done under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Justices of the United States Court of Appeals for the 9th Circuit in the city of Seattle, in the State of Washington, together with this writ, so as to have the same at said place and said Circuit on the 14th day of August, 1911; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 15th day of July, 1911.

Attest my hand and the seal of the District Court for the District of Alaska, Second Division, at the Clerk's Office at Nome, Alaska, this 15th day of July, 1911.

[Seal]

J. SUNDBACK,

Clerk of the District Court for the Dist. of Alaska,
Second Division.

Allowed this 15th day of July, 1911.

CORNELIUS D. MURANE,

Judge of the District Court for the Dist. of Alaska,
Second Division.

[Endorsed]: #2259. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Writ of Error.

*In the District Court for the District of Alaska,
Second Division.*

#2259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH JOURDEN,

Defendant.

Citation [Original].

United States of America,—ss.

The President of the United States to Joseph Jourden and to Messrs. George B. Grigsby, Elwood Bruner, and J. Allison Bruner, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the 9th Circuit to be holden at the city of Seattle, in the State of Washington, within thirty days from the date of this writ, to wit: on the 14th day of August, 1911, pursuant to a writ of error filed in the Clerk's Office of the District Court for the District of Alaska, Second Division, wherein the United States of America is plaintiff and Joseph Jourden is defendant in error, to show cause, if any there by why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this 15th day of July, 1911, and of the independence of the United States of America the One Hundred and Thirty-seventh.

CORNELIUS D. MURANE,
District Judge for the District of Alaska, Second Division.

[Seal] Attest: J. SUNDBACK,
Clerk of the District Court for the District of Alaska,
Second Division.

Service of the foregoing citation and receipt of a copy thereof admitted this 15th day of July, 1911.

GEORGE B. GRIGSBY,
Of Attorney for Defendant.

[Endorsed]: In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Joseph Jourden, Defendant. Citation.

[Endorsed]: No. 2019. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. Joseph Jourden, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the District of Alaska, Second Division.

Filed August 16, 1911.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.